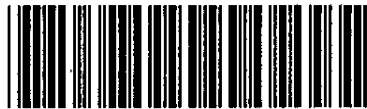


USDC SCAN INDEX SHEET



BUDGET ELECTRIC CONT

INDIANA LUMBERMEN'S

MR

3:95-CV-00529

28

STIPO.

1 John P. McCormick, Esq. SBN 38064
 2 Deborah K. Garvin, Esq. SBN 145390
 3 McCORMICK & MITCHELL
 4 1660 Union Street
 5 San Diego, California 92101
 6 (619) 234-1551

7
 8 Attorneys for Third Party Defendant,
 9 Valmont Industries, Inc.

FILED

JUN 19 1996

CLERK U.S. DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

10 BUDGET ELECTRIC CONTRACTORS, INC.)
 11 dba BEC, INC., a California)
 12 corporation)

13 Plaintiff,

14 vs.

15 INDIANA LUMBERMEN'S MUTUAL)
 16 INSURANCE COMPANY, an Indiana)
 17 corporation; NATIONAL AMERICAN)
 18 INSURANCE COMPANY, a Nebraska)
 19 corporation; and DOES 1 through)
 20 10, inclusive,)

21 Defendants.

22 INDIANA LUMBERMEN'S MUTUAL)
 23 INSURANCE COMPANY, an Indiana)
 24 corporation; NATIONAL AMERICAN)
 25 INSURANCE COMPANY, a Nebraska)
 26 corporation, et al.,)

27 Counter-Claimants,

28 v.

BUDGET ELECTRIC CONTRACTORS, INC.)
 dba BEC, INC., a California)
 corporation; and INSURANCE)
 COMPANY OF THE WEST, a)
 California corporation,

Counter-Defendants.

Case No. 950529E (AJB)

STIPULATION TO PERMIT VALMONT
 INDUSTRIES AND CONSOLIDATED
 ELECTRICAL DISTRIBUTORS TO
 FILE A THIRD PARTY COMPLAINT
 NAMING ADDITIONAL PARTIES

Order

28

1 SO STIPULATED:


PERKINS & MILTNER

2
3 Dated: 5-29-96

BY: 

DAVID A. PERKINS, ESQ.
Attorneys for Plaintiffs/
Counter-defendants
BUDGET ELECTRIC
CONTRACTORS, INC., dba
BEC, INC., and Third
Party Plaintiff/Counter-
defendant INSURANCE
COMPANY OF THE WEST

4
5
6
7
8
9
10 Dated: 5/29/96


LARRY A. ROTHSTEIN, ESQ.
Attorneys for Defendant/
Counter-claimants INDIANA
LUMBERMEN'S MUTUAL INSURANCE
CO. and NATIONAL AMERICAN
INSURANCE COMPANY

11
12
13
14
15 NESS & ROBINSON

16
17 Dated: 5-29-96

BY: 

STEVEN R. BORER, ESQ.
Attorneys for Third
Party Defendant/Cross-
claimant CONSOLIDATED
ELECTRICAL DISTRIBUTORS,
INC.

18
19
20
21
22 SO ORDERED:

23 Dated: 6/18/96


K. G. JUDGE OF THE SOUTHERN
DISTRICT COURT

24
25
26
27 BUDGET\THIRD.STP

John P. McCormick, Esq. SBN 38064
 Deborah K. Garvin, Esq. SBN 145390
 MCCORMICK & MITCHELL
 1660 Union Street
 San Diego, California 92101
 (619) 234-1551

Attorneys for Third Party Defendant/Cross-Claimant
 VALMONT INDUSTRIES, INC.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BUDGET ELECTRIC CONTRACTORS, INC.)
 dba BEC, INC., a California)
 corporation)

Plaintiff,)

vs.)

INDIANA LUMBERMEN'S MUTUAL)
 INSURANCE COMPANY, an Indiana)
 corporation; NATIONAL AMERICAN)
 INSURANCE COMPANY, a Nebraska)
 corporation; and DOES 1 through)
 10, inclusive,)

Defendants.)

INDIANA LUMBERMEN'S MUTUAL)
 INSURANCE COMPANY, an Indiana)
 corporation; NATIONAL AMERICAN)
 INSURANCE COMPANY, a Nebraska)
 corporation, et al.,)

Counter-Claimants,)

v.)

BUDGET ELECTRIC CONTRACTORS, INC.)
 dba BEC, INC., a California)
 corporation; and INSURANCE)
 COMPANY OF THE WEST, a)
 California corporation,)

Counter-Defendants.)

Case No. 950529E (AJB)

THIRD PARTY COMPLAINT OF
 THIRD PARTY DEFENDANT
 VALMONT INDUSTRIES, INC. FOR
 CONTRIBUTION, INDEMNITY AND
 DECLARATORY RELIEF

JURY TRIAL DEMANDED

1 BUDGET ELECTRIC CONTRACTORS, INC.)
 dba BEC, INC., a California)
 2 corporation; and INSURANCE)
 COMPANY OF THE WEST, a)
 3 California corporation,)

4)
 Third Party Plaintiffs,)
 5)

6 vs.)

7 CONSOLIDATED ELECTRICAL)
 DISTRIBUTORS, a Delaware)
 corporation; VALMONT)
 8 INDUSTRIES, INC., a)
 Delaware corporation,)
 9)

Third Party Defendants.)
 10)

11 CONSOLIDATED ELECTRIC)
 DISTRIBUTORS, INC., a Delaware)
 12 corporation,)

13 Cross-Claimant,)

14 vs.)

15 VALMONT INDUSTRIES, INC., a)
 Delaware corporation, and ROES 1 -)
 16 10, Inclusive,)

17 Cross-Defendants)
 18)

19 VALMONT INDUSTRIES, INC., a)
 Delaware corporation,)
 20)

Third Party Plaintiff,)
 21)

22 vs.)

23 LITHONIA HI-TEK and CALIFORNIA)
 LIGHTING SALES and ROES 1 through)
 24 10, inclusive,)

25 Cross-Defendants.)
 26)

27 Third Party Plaintiff, VALMONT INDUSTRIES, INC., alleges as
 follows:

28 / / /

JURISDICTION AND VENUE

1
2 1. Federal jurisdiction is proper since Third Party
3 Plaintiff, VALMONT INDUSTRIES, INC.'S claims against LITHONIA HI-
4 TEK and CALIFORNIA LIGHTING SALES are ancillary to the main claim
5 brought by Third Party Plaintiff BUDGET ELECTRIC CONTRACTORS
6 against Third Party Plaintiff VALMONT INDUSTRIES, INC.

7 2. Third Party Plaintiff, VALMONT INDUSTRIES, INC. is, and
8 at all times herein mentioned was, a corporation organized and
9 existing under and by virtue of the laws of the State of
10 Delaware, and doing business in the State of California.

11 3. Cross-Defendant LITHONIA HI-TEK is, and at all times
12 herein mentioned was, a corporation organized and existing under
13 and by virtue of the laws of the State of Delaware, and doing
14 business in the State of California.

15 4. Cross-Defendant CALIFORNIA LIGHTING SALES is, and at all
16 times herein mentioned was, a corporation organized and existing
17 under and by virtue of the laws of the State of Delaware, and
18 doing business in the State of California.

19 5. On or about June 10, 1992, MARTECH, INC., ("MARTECH")
20 entered into a construction contract with the Department of Navy,
21 MID-PACIFIC ("NAVY") for the construction of a work of
22 improvement commonly known as FY 92 MCON and PROJECT P-140 MK-50
23 MAINTENANCE SHOP located at NAVMAG LUALUALEI, WESTLOCH, Oahu,
24 Hawaii, Contract No. N62471-88-C-1317 ("SUBJECT PROJECT").
25 INDIANA LLUMBERMEN'S MUTUAL INSURANCE COMPANY and NATIONAL
26 AMERICAN INSURANCE COMPANY, as surities provided MARTECH with a
27 payment bond on the PROJECT.

28 6. On or about July 1, 1992, Third Party Plaintiff, BUDGET

(hereinafter "BUDGET") entered into a written sub-contract agreement with MARTECH to provide labor and equipment and materials necessary for electrical work on the SUBJECT PROJECT. In consideration, therefore, MARTECH agreed to pay BUDGET \$810,000.00. Thereafter, and due to non-payment by MARTECH to BUDGET, BUDGET commenced a civil action against INDIANA LUMBERMAN'S MUTUAL INSURANCE COMPANY and NATIONAL AMERICAN INSURANCE COMPANY in United States District Court for the District of Hawaii, Action No. 94-00224 HG, filed on or about March 24, 1994. Subsequently, INDIANA LUMBERMAN'S and NATIONAL AMERICAN entered into a contract with BUDGET to complete electrical work on the SUBJECT PROJECT in exchange for compensation.

7. In accordance with the contract to perform electrical work BUDGET was to supply and install lightning mast for the SUBJECT PROJECT in accordance with the plans and specifications and industry standards. The lightning masts were manufactured by Third Party Plaintiff, VALMONT INDUSTRIES. Due to the alleged nonconformity of the masts, it was necessary to replace the lightning masts at a cost in excess of \$170,000.00. INDIANA LUMBERMAN and NATIONAL AMERICAN sought to recover the costs from BUDGET. BUDGET in turn sought to recover costs against VALMONT and others.

8. Third Party Plaintiff, VALMONT, is informed and believes that BUDGET and CONSOLIDATED ELECTRICAL DISTRIBUTORS entered into an agreement for CONSOLIDATED ELECTRICAL DISTRIBUTORS to supply lightning masts for the SUBJECT PROJECT. Third Party Plaintiff, VALMONT, is informed and believes that

1 Third Party Defendant CALIFORNIA LIGHTING SALES and LITHONIA HI-
2 TEK are in the chain of distribution with Consolidated Electrical
3 Distributors and were active in providing quotations and
4 materials to conform to the plan specifications for the SUBJECT
5 PROJECT.

6 FIRST CAUSE OF ACTION

7 9. That on or about October 27, 1995, third party plaintiff
8 BUDGET ELECTRIC CONTRACTORS, INC. caused to be filed in the
9 United States District Court Southern District of California, a
10 Third Party Complaint (HEREINAFTER BUDGET'S COMPLAINT) for
11 damages bearing case number 950529E(AJB). For purposes of
12 pleading only, and without admitting the truth therein as against
13 Third Party Plaintiff VALMONT INDUSTRIES, INC., Third Party
14 Plaintiff VALMONT INDUSTRIES, INC. refers to the allegations in
15 BUDGET's complaint and all other filed cross-claims, and
16 incorporates the same herein by this reference as though set
17 forth in full.

18 10. Third Party Plaintiff VALMONT INDUSTRIES, INC. is
19 informed and believes, and upon such information and belief
20 alleges that cross-defendants LITHONIA HI-TEK, CALIFORNIA
21 LIGHTING SALES and ROES 1 through 10, acted negligently and/or
22 wrongfully in and about the matters set forth in BUDGET's
23 complaint, and that the damages alleged in BUDGET's complaint
24 were a proximate result of said negligence and/or wrongful
25 conduct.

26 11. That if BUDGET was in fact damaged as alleged, then
27 said damages were solely and/or substantially caused by the
28 negligence and/or wrongful conduct of third party defendants, and

1 each of them, and therefore Third Party Plaintiff VALMONT is
2 entitled to have the percentage of negligence and/or wrongful
3 conduct of third party defendants and each of them, determined
4 by this court.

5 12. That in the event Third Party Plaintiff VALMONT is
6 found liable to BUDGET and judgment is entered accordingly, Third
7 Party Plaintiff VALMONT is entitled to contribution or total
8 indemnity from third party defendants, and each of them, in the
9 amount which Third Party Plaintiff VALMONT must pay to BUDGET for
10 the proportion of that judgment which third party defendants'
11 negligence, and/or wrongful conduct, if any, is found to have
12 contributed to BUDGET's damages.

13 SECOND CAUSE OF ACTION

14 13. Third Party Plaintiff VALMONT refers to the First Cause
15 of Action, which is incorporated by reference herein.

16 14. That by virtue of the negligent and/or wrongful conduct
17 of third party defendants, and each of them, at the time and
18 place set forth in the pleadings on file herein, said third party
19 defendants, and each of them, were "actively" and "primarily"
20 negligent in causing the alleged damages to BUDGET as compared to
21 the "passive" or "secondary" negligence of Third Party Plaintiff
22 VALMONT.

23 15. That by virtue of the "active" and "primary" negligence
24 of third party defendants, and each of them, as compared to the
25 "passive" and "secondary" negligence of Third Party Plaintiff
26 VALMONT, that in the interests of equity and justice, third party
27 defendants, and each of them, should be held liable to Third
28 Party Plaintiff VALMONT for indemnification from and against all

1 manner of costs, liabilities, expenses and fees which Third Party
2 Plaintiff VALMONT might incur to BUDGET or in the defense of the
3 action-in-chief brought by BUDGET against Third Party Plaintiff
4 VALMONT.

5 16. Third Party Plaintiff VALMONT hereby makes demand upon
6 third party defendants, and each of them, to indemnify and hold
7 Third Party Plaintiff VALMONT harmless, to assume defense of this
8 action on behalf of Third Party Plaintiff VALMONT, and to take
9 such steps as are necessary and required to protect Third Party
10 Plaintiff VALMONT, and to pay all claims, settlements, judgments,
11 attorneys fees, and other costs incurred by and/or awarded
12 against Third Party Plaintiff VALMONT.

13 THIRD CAUSE OF ACTION

14 17. Third Party Plaintiff VALMONT refers to the First and
15 Second Causes of Action and incorporates them by reference
16 herein.

17 18. That at the trial of this matter, the third party
18 defendants, and each of them, are necessary and indispensable
19 parties to this action for the purpose of establishing the
20 quantum or percentage of negligence to be apportioned to the
21 third party defendants, and each of them.

22 19. Third Party Plaintiff VALMONT has no adequate or speedy
23 remedy at law, and would suffer irreparable damage in the absence
24 of the filing of this action.

25 20. An actual controversy exists among the parties in that
26 Third Party Plaintiff VALMONT contends that it is entitled to the
27 court's determination as to the proportion of, or lack of,
28 negligence of the third party defendants herein; and that the

1 third party defendants contribute to the discharge of any
2 judgment entered against Third Party Plaintiff VALMONT for that
3 proportion of the judgment which third party defendants'
4 negligence is found to have contributed to BUDGET's damages, or
5 totally indemnify Third Party Plaintiff VALMONT. Third Party
6 VALMONT is informed and believes that third party defendants
7 contend otherwise.

8 WHEREFORE, judgment is prayed against the third party
9 defendants, and each of them, as follows:

10 1. For a determination by this court of the quantum or
11 absence of negligence of each party herein;

12 2. For contribution from third party defendants for that
13 proportion of the judgment which third party defendants' conduct
14 is found to have contributed to BUDGET's damages;


15 3. For total indemnity from third party defendants, and
16 each of them, in the event any amounts are recoverable from Third
17 Party Plaintiff VALMONT;

18 4. For reasonable attorney's fees and costs of suit herein;
19 and

20 5. For such other and further relief as the court may deem
21 just and proper.

22 Dated: June 10, 1996

MCCORMICK & MITCHELL

23
24 By 
25 John P. McCormick
26 Attorneys for Third Party
27 Defendant/Cross-Claimant
28 VALMONT INDUSTRIES, INC.

Steven R. Borer, Esq. (137873)
NESS & ROBINSON
501 West Broadway, Suite 1330
San Diego, California 92101
(619) 595-1483

Attorneys for Third Party Defendant/Cross-Claimant
CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BUDGET ELECTRIC CONTRACTORS,) **CASE NO. 950529E(AJB)**
INC./DBA BEC, INC., a)
California corporation,) **THIRD PARTY COMPLAINT OF THIRD**
Plaintiff,) **PARTY DEFENDANT CONSOLIDATED**
v.) **ELECTRICAL DISTRIBUTORS, INC.**
) **FOR CONTRIBUTION, INDEMNITY AND**
) **DECLARATORY RELIEF**

INDIANA LUMBERMEN'S MUTUAL)
INSURANCE COMPANY, an Indiana) **JURY TRIAL DEMANDED**
corporation; NATIONAL)
AMERICAN INSURANCE COMPANY, a)
Nebraska corporation; and)
DOES 1 through 10, inclusive,)
Defendants.)

INDIANA LUMBERMEN'S MUTUAL)
INSURANCE COMPANY, an Indiana)
corporation; NATIONAL)
AMERICAN INSURANCE COMPANY, a)
Nebraska corporation, et al.,)
Counter-Claimants,)

v.)
BUDGET ELECTRIC CONTRACTORS,)
INC./DBA BEC, INC., a)
California corporation; and)
INSURANCE COMPANY OF THE)
WEST, a California)
corporation,)
Counter-Defendants.)

BUDGET ELECTRIC CONTRACTORS,)
 INC./DBA BEC, INC., a)
 California corporation; and)
 INSURANCE COMPANY OF THE)
 WEST, a California)
 corporation,)

Third Party Plaintiffs,)
 v.)

CONSOLIDATED ELECTRICAL)
 DISTRIBUTORS, a Delaware)
 corporation; VALMONT)
 INDUSTRIES, INC., a Delaware)
 corporation,)

Third Party Defendants.)

CONSOLIDATED ELECTRICAL)
 DISTRIBUTORS, INC., a)
 Delaware corporation,)

Cross-Claimant,)

v.)

VALMONT INDUSTRIES, INC., a)
 Delaware corporation and)
 ROES 1 through 10, inclusive,)

Cross-Defendants.)

CONSOLIDATED ELECTRICAL)
 DISTRIBUTORS, INC., a)
 Delaware corporation,)

Third Party Plaintiff,)

v.)

LITHONIA HI-TEK and)
 CALIFORNIA LIGHTING SALES and)
 ROES 1 through 10, inclusive,)

Cross-Defendants.)

Third Party Plaintiff, CONSOLIDATED ELECTRICAL DISTRIBUTORS,)
 INC., ("CED") alleges as follows:)

JURISDICTION AND VENUE

1
2 1. Federal jurisdiction is proper since third party
3 plaintiff, CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.'s, claims
4 against LITHONIA HI-TEK and CALIFORNIA LIGHTING SALES are
5 ancillary to the main claim brought by third party plaintiff
6 BUDGET ELECTRIC CONTRACTORS against third party plaintiff
7 CONSOLIDATED ELECTRICAL DISTRIBUTORS, INC.

8 2. Third party plaintiff, CONSOLIDATED ELECTRICAL
9 DISTRIBUTORS, INC. is, and at all times herein mentioned was, a
10 corporation organized and existing under and by virtue of the
11 laws of the State of Delaware, and doing business in the State of
12 California.

13 3. Third party defendant LITHONIA HI-TEK is, and at all
14 times herein mentioned was, a corporation organized and existing
15 under and by virtue of the laws of the State of Delaware, and
16 doing business in the State of California.

17 4. Third party defendant CALIFORNIA LIGHTING SALES is, and
18 at all times herein mentioned was, a corporation organized and
19 existing under and by virtue of the laws of the State of
20 Delaware, and doing business in the State of California.

21 5. On or about June 10, 1992, MARTECH, INC., ("MARTECH")
22 entered into a construction contract with the Department of Navy,
23 MID-PACIFIC ("NAVY") for the construction of a work of
24 improvement commonly known as FY 92 MCON and PROJECT P-140 MK-50
25 MAINTENANCE SHOP located at NAVMAG LUALUALEI, WESTLOCH, Oahu,
26 Hawaii, Contract No. N62471-88-C-1317 ("SUBJECT PROJECT").
27 INDIANA LUMBERMEN'S MUTUAL INSURANCE COMPANY and NATIONAL
28

1 AMERICAN INSURANCE COMPANY, as sureties provided MARTECH with a
2 payment bond on the PROJECT.

3 6. On or about July 1, 1992, third party plaintiff, BUDGET
4 ELECTRIC CONTRACTORS, INC., ("BEC") entered into a written sub-
5 contract agreement with MARTECH to provide labor and equipment
6 and materials necessary for electrical work on the SUBJECT
7 PROJECT. In consideration, therefore, MARTECH agreed to pay BEC
8 \$810,000.00. Thereafter, and due to non-payment by MARTECH to
9 BEC, BEC commenced a civil action against INDIANA LUMBERMEN'S
10 MUTUAL INSURANCE COMPANY and NATIONAL AMERICAN INSURANCE COMPANY
11 in United States District Court for the District of Hawaii,
12 Action No. 94-00224 HG, filed on or about March 24, 1994.
13 Subsequently, INDIANA LUMBERMEN's and NATIONAL AMERICAN entered
14 into a contract with BEC to complete electrical work on the
15 SUBJECT PROJECT in exchange for compensation.

16 7. In accordance with the contract to perform electrical
17 work BEC was to supply and install lightning masts for the
18 SUBJECT PROJECT in accordance with the plans and specifications
19 and industry standards. The lightning masts were manufactured by
20 third party plaintiff, VALMONT INDUSTRIES. Due to the alleged
21 nonconformity of the masts, it was necessary to replace the
22 lightning masts at a cost in excess of \$170,000.00. INDIANA
23 LUMBERMEN and NATIONAL AMERICAN sought to recover the costs from
24 BEC. BEC in turn sought to recover costs against CED and others.

25 8. Third party plaintiff, CONSOLIDATED ELECTRICAL
26 DISTRIBUTORS, INC., is informed and believes that BEC and CED,
27 entered into an agreement for CED to supply lightning masts for
28 the SUBJECT PROJECT. Third party plaintiff CED is informed and

1 believes that third party defendant CALIFORNIA LIGHTING SALES and
2 LITHONIA HI-TEK are in the chain of distribution with CED and
3 were active in providing quotations and materials to conform to
4 the plan specifications for the SUBJECT PROJECT.

5 **FIRST CAUSE OF ACTION**

6 9. That on or about October 27, 1995, third party
7 plaintiff BEC caused to be filed in the United States District
8 Court Southern District of California, a complaint for damages
9 bearing case number 950529E(AJB). For purposes of pleading only,
10 and without admitting the truth therein as against third party
11 plaintiff CED, CED refers to the allegations in BEC's complaint
12 and all other filed cross-claims, and incorporates the same
13 herein by this reference as though set forth in full.

14 10. Third party plaintiff CED is informed and believes, and
15 upon such information and belief alleges that third party
16 defendants, LITHONIA HI-TEK and CALIFORNIA LIGHTING SALES, and
17 ROES 1 through 10, acted negligently and/or wrongfully in and
18 about the matters set forth in BEC's complaint, and that the
19 damages alleged in BEC's complaint were a proximate result of
20 said negligence and/or wrongful conduct.

21 11. That if BEC was in fact damaged as alleged, then said
22 damages were solely and/or substantially caused by the negligence
23 and/or wrongful conduct of third party defendants, and each of
24 them, and therefore third party plaintiff CED is entitled to have
25 the percentage of negligence and/or wrongful conduct of third
26 party defendants, and each of them, determined by this court.

27 12. That in the event third party plaintiff CED is found
28 liable to BEC and judgment is entered accordingly, third party

1 plaintiff CED is entitled to contribution or total indemnity from
2 third party defendants, and each of them, in the amount which
3 third party plaintiff CED must pay to BEC for the proportion of
4 that judgment which third party defendants' negligence, and/or
5 wrongful conduct, if any, is found to have contributed to BEC's
6 damages.

7 **SECOND CAUSE OF ACTION**

8 13. Third party plaintiff CED refers to the First Cause of
9 Action, which is incorporated by reference herein.

10 14. That by virtue of the negligent and/or wrongful conduct
11 of third party defendants, and each of them, at the time and
12 place set forth in the pleadings on file herein, said third party
13 defendants, and each of them, were "actively" and "primarily"
14 negligent in causing the alleged damages to BEC as compared to
15 the "passive" or "secondary" negligence of third party plaintiff
16 CED.

17 15. That by virtue of the "active" and "primary" negligence
18 of third party defendants, and each of them, as compared to the
19 "passive" and "secondary" negligence of third party plaintiff
20 CED, that in the interests of equity and justice, third party
21 defendants, and each of them, should be held liable to third
22 party plaintiff CED for indemnification from and against all
23 manner of costs, liabilities, expenses and fees which third party
24 plaintiff CED might incur to BEC or in the defense of the action-
25 in-chief brought by BEC against third party plaintiff CED.

26 16. Third party plaintiff CED hereby makes demand upon
27 third party defendants, and each of them, to indemnify and hold
28 third party plaintiff CED harmless, to assume defense of this

1 action on behalf of third party plaintiff CED, and to take such
2 steps as are necessary and required to protect third party
3 plaintiff CED, and to pay all claims, settlements, judgments,
4 attorneys fees, and other costs incurred by and/or awarded
5 against third party plaintiff CED.

6 **THIRD CAUSE OF ACTION**

7 17. Cross-claimant refers to the First and Second Causes of
8 Action and incorporates them by reference herein.

9 That at the trial of this matter, the third party
10 defendants, and each of them, are necessary and indispensable
11 parties to this action for the purpose of establishing the
12 quantum or percentage of negligence to be apportioned to the
13 third party defendants, and each of them.

14 18. Third party plaintiff CED has no adequate or speedy
15 remedy at law, and would suffer irreparable damage in the absence
16 of the filing of this action.

17 19. An actual controversy exists among the parties in that
18 third party plaintiff CED contends that it is entitled to the
19 court's determination as to the proportion of, or lack of,
20 negligence of third party plaintiff CED and the third party
21 defendants herein; and that third party defendants contribute to
22 the discharge of any judgment entered against third party
23 plaintiff CED for that proportion of the judgment which third
24 party defendants' negligence is found to have contributed to
25 BEC's damages, or totally indemnify third party plaintiff CED.
26 Third party plaintiff CED is informed and believes that third
27 party defendants contend otherwise.
28

1 WHEREFORE, judgment is prayed against the third party
2 defendants, and each of them, as follows:

3 1. For a determination by this court of the quantum or
4 absence of negligence of each party herein;

5 2. For contribution from third party defendants for that
6 proportion of the judgment which third party defendants' conduct
7 is found to have contributed to BEC's damages;

8 3. For total indemnity from third party defendants, and
9 each of them, in the event any amounts are recoverable from third
10 party plaintiff CED;

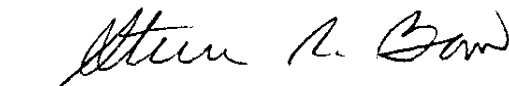
11 4. For reasonable attorney's fees and costs of suit
12 herein; and

13 5. For such other and further relief as the court may deem
14 just and proper.

15 Dated: June 7, 1996

LAW OFFICES OF NESS & ROBINSON

16
17 BY:


18 STEVEN R. BORER
19 Attorney for Third Party Defendant/
20 Third Party Plaintiff
21 CONSOLIDATED ELECTRICAL
22 DISTRIBUTORS, INC.
23
24
25
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27
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BUDGET ELECTRIC CONTRACTORS, et al. v.
INDIANA LUMBERMAN'S MUTUAL INSURANCE CO., et al.
and Related Cross-actions
United States District Court
Southern District
Case No. 950529E (AJB)

PROOF OF SERVICE

I, Mary Ann Mix, declare as follows:

I am over the age of eighteen years and not a party to the case. I am employed in the County of San Diego, California, where the service occurs; and my business address is 1660 Union Street, San Diego, California 92101.

On June 10, 1996, I served the foregoing document(s):

STIPULATION TO PERMIT VALMONT INDUSTRIES AND CONSOLIDATED ELECTRICAL DISTRIBUTORS TO FILE A THIRD PARTY COMPLAINT NAMING ADDITIONAL PARTIES.

on: **SEE ATTACHED SERVICE LIST**

by placing a true copy thereof enclosed in a sealed envelope.

☒ BY MAIL. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service, and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business pursuant to Code of Civil Procedure §1013a.

☐ BY FAX. In addition to service by mail as set forth above, a copy of said document(s) were also delivered by facsimile transmission to the above addressee pursuant to Code of Civil Procedure §1013e.

☐ BY PERSONAL SERVICE. Said document(s) were hand-delivered to the addressee pursuant to Code of Civil Procedure §1011.

☐ BY EXPRESS MAIL. I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure §1013(c).

Executed June 10, 1996, at San Diego, California.

I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.


Mary Ann Mix